

U.S. Department of Justice

United States Attorney Southern District of New York

86 Chambers Street, 3rd floor New York, New York 10007

February 23, 2015

BY HAND DELIVERY

Clerk of the Court 60 Centre Street Supreme Court of the State of New York County of New York New York, NY 10007

Re: Gallo v. Baldini, Index No.: 160388/2014

Dear Clerk of the Court:

The United States of America, by and through its attorney, Preet Bharara, United States Attorney for the Southern District of New York, respectfully submits this Statement of Interest pursuant to 28 U.S.C. § 517, concerning the immunity of Roberta Baldini, an official of the United Nations (the "UN"), from legal process in this suit. ¹

Pursuant to the Convention on the Privileges and Immunities of the United Nations ("General Convention"), officials of the UN are "immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity." General Convention, *adopted* Feb. 13, 1946, 21 U.S.T. 1418, 1 U.N.T.S. 16, Art. V, § 18(a) (entered into force Sept. 17, 1946; for the United States April 29, 1970) (attached hereto as Exhibit A, and also available at http://www.un.org/en/ethics/pdf/convention.pdf). This immunity extends to "all members of the staff of the United Nations, with the exception of those who are recruited locally and are assigned to hourly rates." G.A. Res. 76(I), U.N. Doc. A/116, at 139 (Dec. 7, 1946) (attached hereto as Exhibit B, and also available at http://daccess-

¹ 28 U.S.C. § 517 provides that "[t]he Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States." The submission of a Statement of Interest does not constitute intervention by the United States in these proceedings. This letter is provided by the U.S. Attorney's Office, Civil Division, at the request of the Department of State in order to set forth the interests of the United States as they relate to the immunity of the UN.

ods.un.org/TMP/5212234.85469818.html). The UN Secretary General has the sole authority to waive the immunity of officials of the UN. *See* General Convention, Art. V, § 20.

Roberta Baldini ("Ms. Baldini" or "Defendant") enjoys immunity with regards to the above-captioned matter (the "Complaint" or "Cplt."). Peter Gallo ("Mr. Gallo" or "Plaintiff") alleges that he was defamed by Ms. Baldini. See Cplt. at ¶ 165. This claim concerns actions allegedly undertaken by Ms. Baldini only in her official capacity as a UN staff member in the Office of Internal Oversight Services and, for much of the relevant period, as Mr. Gallo's supervisor at the UN. See Cplt. at ¶¶ 2, 4, 9, 11, 20, 24-26, 37, 49-51, 53, 55, 62-65, 79-80, 92-95, 120-26, 145, and 149-53; see Letter from Miguel de Serpa Soares, Under-Secretary-General for Legal Affairs and UN Legal Counsel, dated December 17, 2014, at *2 (the "December 17 Letter" attached hereto as Exhibit C); see Letter from Stephen Mathias, Assistant Secretary-General in charge of the Office of Legal Affairs, dated January 7, 2015, at *2 (the "January 7 Letter" attached hereto as Exhibit D). The UN has confirmed that Ms. Baldini is not assigned to hourly rates. January 7 Letter at *2. Finally, the Secretary General of the UN has not waived Ms. Baldini's immunity. Instead, the UN has explicitly asserted Ms. Baldini's immunity in this case. December 17 Letter at *2 (the UN "expressly maintains the immunity of the United Nations, and specifically, Ms. Baldini, in respect of the ... Complaint"); January 7 Letter at *2 (the "United Nations expressly maintains the immunity of the United Nations, and specifically, the immunity accorded to Ms. Baldini, in respect of the ... Complaint.")

Plaintiff puts forth two arguments for why this Court has jurisdiction over his claim. First, he contends that the UN's internal procedures have been ineffective in addressing his grievances. See id. ¶¶ 143, 162. However, the existence or adequacy of internal grievance procedures has no relevance as to whether Ms. Baldini, as a UN official acting in her official capacity, is immune from suit. Second, Plaintiff argues that because Ms. Baldini's allegedly false statements were not uttered in the UN Headquarters District, this Court has jurisdiction over his claim. See id. ¶¶ 146-48. However, the location of a UN official's acts has no bearing on whether he or she is immune under the General Convention. Therefore, and as discussed in more detail below, Ms. Baldini is immune from legal process in the present action.

Background

Mr. Gallo's claim for defamation against Ms. Baldini arises out of alleged actions taken in her official capacity as a staff member of the UN. He alleges that at all times relevant to the Complaint, he and Ms. Baldini were employed in the UN's Office of Internal Oversight Services, Investigations Division, see Cplt. at ¶¶ 2, 4, and that between March 2011 and June 2013, Ms. Baldini was Mr. Gallo's "First Reporting Officer" and then "Second Reporting Officer." See id. at ¶¶ 9, 11, 20, 51. Plaintiff claims that Ms. Baldini: presented Plaintiff with a performance improvement plan in retaliation for a fraud investigation that Plaintiff conducted, see id. at ¶¶ 24-26; falsely accused Plaintiff of misconduct, see id. at ¶ 37; failed to properly supervise Plaintiff's immediate

supervisor, *see id.* at ¶¶ 49-50; and improperly delayed processing Plaintiff's Investigation Report. *See id.* ¶¶ 79-80.

Plaintiff further alleges that after Ms. Baldini ceased supervising him in June 2013, she: improperly influenced his appraisals, *see id.* at ¶¶ 53, 55; submitted a false complaint alleging that "[Plaintiff] 'used rude words' about her," *see id.* at ¶¶ 62-65; stated that Plaintiff violated "non-existent guidelines," *see id.* at ¶¶ 92-95; falsely claimed to the UN Special Investigations Unit that Plaintiff attempted to assault her, *see id.* ¶¶ 120-26, 145; and falsely reported that Plaintiff possessed a firearm in the workplace, *see id.* at ¶¶ 149-53. Accordingly, the allegations against Ms. Baldini all concern actions taken, or words spoken or written, by Ms. Baldini in her official capacity as a UN official.

Interest of the United States

The United States' interest in this case arises from its treaty obligations—which are binding upon U.S. courts—to respect the immunities of the UN and its officials. These obligations arise pursuant to the Charter of the United Nations, June 26, 1945, 59 Stat. 1033 (entered into force Oct. 24, 1945) and the General Convention, both treaties to which the United States is a party.

Discussion

A. Ms. Baldini Is Immune from Legal Process in the Present Suit

The UN Charter provides that the UN "shall enjoy ... such privileges and immunities as are necessary for the fulfillment of its purposes," and its officials "shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the organization." The Charter of the United Nations, June 26, 1945, 59 Stat. 1031, art 105. § 1. The General Convention, which the UN adopted shortly after the UN Charter, defines the UN's privileges and immunities, and specifically provides that "[o]fficials of the United Nations shall ... be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity." General Convention, Art. V, § 18(a). This immunity

² Because the General Convention is self-executing, this immunity applies not only as a matter of international law, but in domestic litigation as well. See Brzak v. United Nations, 597 F.3d 107, 111 (2d Cir. 2010). Numerous New York courts have acknowledged the obligation to respect and enforce the UN treaty obligations of the United States, including with respect to the UN. See e.g., Corcoran v. Ardra Ins. Co., 77 N.Y.2d 225, 230 (N.Y. 1990) (noting that "[t]he Supremacy Clause provides that 'all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land'"); Shamsee v. Shamsee, 74 A.D.2d 357, 361 (2d Dep't 1980) (reversing finding of contempt against UN official based on immunities set forth in General Convention); Cooper v. Ateliers de la Motobecane, 57 N.Y.2d 408, 410-15 (N.Y. 1982) (enforcing the UN Convention on the Recognition and Enforcement of Foreign

applies to "all members of the staff of the United Nations, with the exception of those who are recruited locally and are assigned to hourly rates." G.A. Res. 76(I), U.N. Doc. A/116, at 139 (Dec. 7, 1946); see also General Convention, Art. V, § 17. The UN Secretary General may "waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations." General Convention, Art. V, § 20.

According to the UN, Ms. Baldini is an official of the UN within the meaning of Article V of the General Convention. See January 7 Letter at *2 (Ms. Baldini "is a United Nations staff member and is not assigned to hourly rates"); see also G.A. Res. 76(I), U.N. Doc. A/116, at 139 (Dec. 7, 1946). Absent a waiver of her immunity, she is immune from legal process with respect to all words spoken or written and acts performed by her in her official capacity. See General Convention, Art. V, § 18(a).

Plaintiff's suit against Ms. Baldini relates entirely to words allegedly spoken or written and actions allegedly undertaken by Ms. Baldini in her official capacity as a UN staff member in the Office of Internal Oversight Services and as Plaintiff's supervisor at the UN. Plaintiff's suit centers on his employment with the UN, namely the alleged retaliatory misconduct of his former supervisor. See Cplt. at ¶¶ 2, 4, 9, 11, 20, 24-26, 37, 49-51, 53, 55, 62-65, 79-80, 92-95, 120-26, 145, and 149-53. Courts have routinely held that defendants in such employment related disputes are immune from legal process because they were UN officials acting in their official capacity. See Van Aggelen v. United Nations, 311 F. App'x 407, 409 (2d Cir. 2009) (acknowledging immunity, based on Article V, § 18(a), of UN employee sued under Title VII of the 1964 Civil Rights Act and Title I of the 1990 Americans With Disabilities Act); McGehee v. Albright, 210 F. Supp. 2d 210, 217-18 (S.D.N.Y. 1999) (dismissing wrongful termination suit against UN Secretary General and citing Article V, § 18(a)); D'Cruz v. Annan, No. 05 Civ. 8918 (DC), 2005 WL 3527153, at *1 (S.D.N.Y. Dec. 22, 2005) (determining, pursuant to Article V, § 18(a), that defendants were immune from suit involving retaliation and other employment-related claims); Boimah v. United Nations Gen. Assembly, 664 F. Supp. 69, 72 (E.D.N.Y. 1987) (noting generally that Article V, § 18(a) grants immunity to officials making employment-related decisions). Accordingly, absent a waiver by the UN Secretary General, Article V, § 18(a) of the General Convention grants immunity to Ms. Baldini in this matter.

B. Ms. Baldini's Immunity Has Not Been Waived

As noted above, the UN Secretary General may "waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations."

Arbitral Awards); *Hunter*, 2004 WL 3104829, at *2-6 (because of the immunities conferred by the UN Charter and General Convention, dismissing claims against the UN, a UN agency, and UN officials); *Curran v. City of New York*, 77 N.Y.S.2d 206, 211-12 (N.Y. Sup. Ct. 1947) (analyzing plaintiff's allegations in light of the provisions of and immunity conferred by the UN Charter).

General Convention, Art. V, § 20. Here, the UN has expressly sought to preserve Ms. Baldini's immunity. In its December 17 Letter, the UN explained that it is "expressly asserting the immunity of [Defendant] in relation to [Plaintiff's suit]." December 17 Letter at *2. Similarly, in its January 7 Letter, the UN stated that it "expressly maintains the immunity of the United Nations, and specifically, the immunity accorded to [Defendant]." January 7 Letter at *2. In both letters, the UN also requested that the United States Government "take the appropriate steps with a view to ensuring that the privileges and immunities of the United Nations and its officials are maintained in respect of this legal action." December 17 Letter at *2; January 7 Letter at *2. Accordingly, because the UN Secretary General has not waived the immunity of Ms. Baldini, she is immune in the present action.

C. Plaintiff's Allegations Concerning the Location of the Alleged Misconduct and the UN's Internal Grievance Procedures Have No Bearing on the Immunity of Ms. Baldini

Plaintiff's Complaint suggests two reasons that this Court has jurisdiction over this matter. Both are mistaken. First, Plaintiff alleges that this Court has jurisdiction because some of the alleged misconduct occurred "within the City of New York, not on United Nations property," and outside the UN Headquarters District. See Cplt. at ¶¶ 146-48. However, the unambiguous text of the General Convention makes clear that Ms. Baldini, as a UN official acting in her official capacity, and regardless of the location of her official acts, is immune from legal process absent a waiver by the UN Secretary General. See General Convention, Art. V, § 18(a) (applying, without limitation, to "words spoken or written and all acts performed by [officials] in their official capacity"). Cf Askir v. Boutros-Ghali, 933 F. Supp. 368, 370-73 (S.D.N.Y. 1996) (recognizing immunity of UN officials where alleged misconduct involved the "unauthorized and unlawful possession" of plaintiff's real property located in Somalia).

Second, Plaintiff emphasizes that the UN's internal procedures have failed to effectively address his grievances. See Cplt. at ¶¶ 143, 162. In its December 17 Letter and its January 7 Letter, the UN stated that "there is an available forum and process for dealing with such workplace disputes at the United Nations." December 17 Letter at *2; January 7 Letter at *2. Nevertheless, whether the UN's internal procedures have been or will be able to adequately address Plaintiff's grievances has no bearing on Ms. Baldini's immunity under Article V, § 18(a) of the General Convention. See Brzak, 597 F.3d at 112-13 (holding the UN and its officials immune despite plaintiffs' contention that the UN's dispute mechanisms were inadequate); McGehee, 210 F. Supp. 2d at 212, 218 (dismissing claim against immune defendant, notwithstanding plaintiff's allegations that the UN's administrative tribunal "abused its discretion, violated its own rules, and denied her due process in rendering its decision" regarding her reinstatement).

D. Deference Should Be Granted to the Executive Branch's Reasonable Interpretation of the General Convention

To the extent there could be any alternative reading of the General Convention's text, the Court should defer to the Executive Branch's reasonable interpretation. *See Abbott v. Abbott*, 560 U.S. 1, 15 (2010) ("It is well settled that the Executive Branch's interpretation of a treaty is entitled to great weight.") (internal citation and quotation marks omitted); *Kolovrat v. Oregon*, 366 U.S. 187, 194 (1961) ("While courts interpret treaties for themselves, the meaning given them by the departments of government particularly charged with their negotiation and enforcement is given great weight."); *Tachiona v. United States*, 386 F.3d 205, 216 (2d Cir. 2004) (interpreting the General Convention and noting, "in construing treaty language, '[r]espect is ordinarily due the reasonable views of the Executive Branch") (quoting *El Al Israel Airlines, Ltd. v. Tsui Yuan Tseng*, 525 U.S. 155, 168 (1999)); *Keesler v. Fuji Heavy Indus., Ltd.*, 862 N.Y.S.2d 815, 2008 WL 860116, at *2 (N.Y. Sup. Ct. Mar. 28, 2008) (Courts are required to 'give great weight to treaty interpretations made by the Executive Branch'") (quoting Restatement (Third) of Foreign Relations Law of the United States § 326(2) (1986)).

Here, the Executive Branch, and specifically the Department of State, is charged with maintaining relations with the United Nations, and so its views are entitled to deference. The Executive Branch's interpretation should be given particular deference in this case because the interpretation is shared by the UN. See December 17 Letter at *2; January 7 Letter at *2; see also, e.g., Sumitomo Shoji America, Inc. v. Avagliano, 457 U.S. 176, 185 (1982) ("When the parties to a treaty both agree as to the meaning of a treaty provision, and that interpretation follows from the clear treaty language, we must, absent extraordinarily strong contrary evidence, defer to that interpretation.").

Conclusion

For the reasons stated above, Ms. Baldini is immune from legal process in this suit.

Thank you for your consideration of this matter.

Respectfully,

PREET BHARARA

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All counsel of record in Gallo v. Baldini, Index No.: 160388/2014

Exhibit A

No. 4

CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS

Adopted by the General Assembly of the United Nations on 13 February 1946

Official texts in English and in French. This Convention was registered ex officio by the Secretariat of the United Nations on 14 December 1946.

CONVENTION SUR LES PRIVILÈGES ET IMMUNITÉS DES NATIONS UNIES

Approuvée par l'Assemblée générale des Nations Unies le 13 février 1946

Textes officiels anglais et français. Cette Convention a été enregistrée d'office par le Secrétariat de l'Organisation des Nations Unies le 14 décembre 1946.

No. 4. CONVENTION¹ ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS, ADOPTED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 13 FEBRUARY 1946

Whereas Article 104 of the Charter of the United Nations provides that the Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes and

Whereas Article 105 of the Charter of the United Nations provides that the Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes and that representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization.

Consequently the General Assembly by a Resolution adopted on the 13 February 1946, approved the following Convention and proposed it for accession by each Member of the United Nations.

Article I

JURIDICAL PERSONALITY

- SECTION 1. The United Nations shall possess juridical personality. It shall have the capacity:
 - (a) To contract;
 - (b) To acquire and dispose of immovable and movable property;
 - (c) To institute legal proceedings.

Article II

PROPERTY, FUNDS AND ASSETS

SECTION 2. The United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of

¹ Came into force (see page 263 of this volume) on 17 September 1946 as regards United Kingdom of Great Britain and Northern Ireland by the deposit of the instrument of accession.

legal process except insofar as in any particular case it has expressly waived its immunity shall extend to any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

- SECTION 3. The premises of the United Nations shall be inviolable. The property and assets of the United Nations, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.
- SECTION 4. The archives of the United Nations, and in general all documents belonging to it or held by it, shall be inviolable wherever located.
- SECTION 5. Without being restricted by financial controls, regulations or moratoria of any kind,
 - (a) The United Nations may hold funds, gold or currency of any kind and operate accounts in any currency;
 - (b) The United Nations shall be free to transfer its funds, gold or currency from one country to another or within any country and to convert any currency held by it into any other currency.
- SECTION 6. In exercising its rights under Section 5 above, the United Nations shall pay due regard to any representations made by the Government of any Member insofar as it is considered that effect can be given to such representations without detriment to the interests of the United Nations.
- SECTION 7. The United Nations, its assets, income and other property shall be:
 - (a) Exempt from all direct taxes; it is understood, however, that the United Nations will not claim exemption from taxes which are, in fact, no more than charges for public utility services;
 - (b) Exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the United Nations for its official use. It is understood, however, that articles imported under such exemption will not be sold in the country into which they were imported except under conditions agreed with the Government of that country;

- (c) Exempt from customs duties and prohibitions and restrictions on imports and exports in respect of its publications.
- SECTION 8. While the United Nations will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, nevertheless when the United Nations is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, Members will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax.

Article III

FACILITIES IN RESPECT OF COMMUNICATIONS

Section 9. The United Nations shall enjoy in the territory of each Member for its official communications treatment not less favourable than that accorded by the Government of that Member to any other Government including its diplomatic mission in the matter of priorities, rates and taxes on mails, cables, telegrams, radiograms, telephotos, telephone and other communications; and press rates for information to the press and radio. No censorship shall be applied to the official correspondence and other official communications of the United Nations.

SECTION 10. The United Nations shall have the right to use codes and to despatch and receive its correspondence by courier or in bags, which shall have the same immunities and privileges as diplomatic couriers and bags.

Article IV

THE REPRESENTATIVES OF MEMBERS

- SECTION 11. Representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, shall, while exercising their functions and during the journey to and from the place of meeting, enjoy the following privileges and immunities:
 - (a) Immunity from personal arrest or detention and from seizure of their personal baggage, and, in respect of words spoken or written and all acts done by them in their capacity as representatives, immunity from legal process of every kind;
 - (a) Inviolability for all papers and documents;

- (c) The right to use codes and to receive papers or correspondence by courier or in sealed bags;
- (d) Exemption in respect of themselves and their spouses from immigration restrictions, aliens registration or national service obligations in the state they are visiting or through which they are passing in the exercise of their functions;
- (e) The same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;
- (f) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys, and also;
- (g) Such other privileges, immunities and facilities not inconsistent with the foregoing as diplomatic envoys enjoy, except that they shall have no right to claim exemption from customs duties on goods imported (otherwise than as part of their personal baggage) or from excise duties or sales taxes.
- SECTION 12. In order to secure, for the representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, complete freedom of speech and independance in the discharge of their duties, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their duties shall continue to be accorded, notwithstanding that the persons concerned are no longer the representatives of Members.
- SECTION 13. Where the incidence of any form of taxation depends upon residence, periods during which the representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations are present in a state for the discharge of their duties shall not be considered as periods of residence.
- SECTION 14. Privileges and immunities are accorded to the representatives of Members not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the United Nations. Consequently a Member not only has the right but is under a duty to waive the immunity of its representative in any case where in the opinion of the Member the immunity would impede the course of justice, and it can be waived without prejudice to the purpose for which the immunity is accorded.

SECTION 15. The provisions of Sections 11, 12 and 13 are not applicable as between a representative and the authorities of the state of which he is a national or of which he is or has been the representative.

SECTION 16. In this article the expression "representatives" shall be deemed to include all delegates, deputy delegates, advisers, technical experts and secretaries of delegations.

Article V

OFFICIALS

SECTION 17. The Secretary-General will specify the categories of officials to which the provisions of this Article and Article VII shall apply. He shall submit these categories to the General Assembly. Thereafter these categories shall be communicated to the Governments of all Members. The names of the officials included in these categories shall from time to time be made known to the Governments of Members.

SECTION 18. Officials of the United Nations shall:

- (a) Be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;
- (b) Be exempt from taxation on the salaries and emoluments paid to them by the United Nations;
 - (c) Be immune from national service obligations;
- (d) Be immune, together with their spouses and relatives dependent on them, from immigration restrictions and alien registration;
- (e) Be accorded the same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of diplomatic missions to the Government concerned;
- (f) Be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crisis as diplomatic envoys;
- (g) Have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question.

Section 19. In addition to the immunities and privileges specified in Section 18, the Secretary-General and all Assistant Secretaries-General shall be accorded in respect of themselves, their spouses and minor children, the

privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.

SECTION 20. Privileges and immunities are granted to officials in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations. In the case of the Secretary-General, the Security Counsil shall have the right to waive immunity.

SECTION 21. The United Nations shall co-operate at all times with the appropriate authorities of Members to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities mentioned in this Article.

Article VI

EXPERTS ON MISSIONS FOR THE UNITED NATIONS

SECTION 22. Experts (other than officials coming within the scope of Article V) performing missions for the United Nations shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connection with their missions. In particular they shall be accorded:

- (a) Immunity from personal arrest or detention and from seizure of their personal baggage;
- (b) In respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind. This immunity from legal process shall continue to be accorded notwithstanding that the persons concerned are no longer employed on missions for the United Nations;
 - (c) Inviolability for all papers and documents;
- (d) For the purpose of their communications with the United Nations, the right to use codes and to receive papers or correspondence by courier or in sealed bags;

- (e) The Same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;
- (f) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys.

Section 23. Privileges and immunities are granted to experts in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any expert in any case where, in his opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of the United Nations.

Article VII

UNITED NATIONS LAISSEZ-PASSER

SECTION 24. The United Nations may issue United Nations laissez-passer to its officials. These laissez-passer shall be recognized and accepted as valid travel documents by the authorities of Members, taking into account the provisions of Section 25.

SECTION 25. Applications for visas (where required) from the holders of United Nations laissez-passer, when accompanied by a certificate that they are travelling on the business of the United Nations, shall be dealt with as speedily as possible. In addition, such persons shall be granted facilities for speedy travel.

SECTION 26. Similar facilities to those specified in Section 25 shall be accorded to experts and other persons who, though not the holders of United Nations laissez-passer, have a certificate that they are travelling on the business of the United Nations.

Section 27. The Secretary-General, Assistant Secretaries-General and Directors travelling on United Nations laissez-passer on the business of the United Nations shall be granted the same facilities as are accorded to diplomatic envoys.

SECTION 28. The provisions of this article may be applied to the comparable officials of specialized agencies if the agreements for relationship made under Article 63 of the Charter so provide.

Article VIII

SETTLEMENTS OF DISPUTES

Section 29. The United Nations shall make provisions for appropriate modes of settlement of:

- (a) Disputes arising out of contracts or other disputes of a private law character to which the United Nations is a party;
- (b) Disputes involving any official of the United Nations who by reason of his official position enjoys immunity, if immunity has not been waived by the Secretary-General.

Section 30. All differences arising out of the interpretation or application of the present convention shall be referred to the International Court of Justice, unless in any case it is agreed by the parties to have recourse to another mode of settlement. If a difference arises between the United Nations on the one hand and a Member on the other hand, a request shall be made for an advisory opinion on any legal question involved in accordance with Article 96 of the Charter and Article 65 of the Statute of the Court. The opinion given by the Court shall be accepted as decisive by the parties.

Final Article

SECTION 31. This convention is submitted to every Member of the United Nations for accession.

SECTION 32. Accession shall be affected by deposit of an instrument with the Secretary-General of the United Nations and the convention shall come into force as regards each Member on the date of deposit of each instrument of accession.

SECTION 33. The Secretary-General shall inform all Members of the United Nations of the deposit of each accession.

SECTION 34. It is understood that, when an instrument of accession is deposited on behalf of any Member, the Member will be in a position under its own law to give effect to the terms of this convention.

SECTION 35. This convention shall continue in force as between the United Nations and every Member which has deposited an instrument of accession for so long as that Member remains a Member of the United

Nations, or until a revised general convention has been approved by the General Assembly and that Member has become a party to this revised convention.

SECTION 36. The Secretary-General may conclude with any Member or Members supplementary agreements adjusting the provisions of this convention so far as that Member or those Members are concerned. These supplementary agreements shall in each case be subject to the approval of the General Assembly.

UNITED NATIONS and LEAGUE OF NATIONS

Protocol (No. I) concerning the execution of various operations in the transfer to the United Nations of certain assets of the League of Nations. Signed at Geneva, on 1 August 1946

French official text communicated by the Secretary-General of the United Nations. The filing and recording took place on 14 December 1946.

ORGANISATION DES NATIONS UNIES et SOCIETE DES NATIONS

Protocole (No I) concernant l'exécution de diverses opérations de transfert de certains avoirs de la Société des Nations aux Nations Unies. Signé à Genève, le 1er août 1946

Γexte officiel français communiqué par le Secrétaire général de l'Organisation des Nations Unies. Le classement et l'inscription au répertoire ont eu lieu le 14 décembre 1946.

TRANSLATION—TRADUCTION

No. 4. PROTOCOL (NO. I) CONCERNING THE EXECUTION OF VARIOUS OPERATIONS IN THE TRANSFER TO THE UNITED NATIONS OF CERTAIN ASSETS OF THE LEAGUE OF NATIONS, SIGNED AT GENEVA ON 1 AUGUST 1946

Mr. Sean Lester, Secretary-General of the League of Nations, and Mr. Wlodzimierz Moderow, Director, Representative of the Secretary-General of the United Nations in Geneva:

Note that, in application of the Common Plan, approved by a resolution of the General Assembly of the United Nations, dated 12 February 1946, and by a resolution of the Assembly of the League of Nations, dated 18 April 1946, and of a subsequent Agreement¹ dated 19 July 1946, concerning the execution of the transfer to the United Nations of certain assets of the League of Nations, the following operations were effected on 1 August 1946:

- 1. The transfer of rights in respect of the League of Nations buildings and other immovable property was effected on 1 August 1946, and the necessary entries having been made this day in the Land Register of the Republic and Canton of Geneva.
- 2. The transfer of the ownership and possession of the movable property was also effected on 1 August 1946.

In accordance with Article 6 of the Agreement of 19 July 1946, the movable objects transferred have been listed in an inventory drawn up by the League of Nations which is in course of being verified by the United Nations. A protocol will be drawn up placing on record the completion of this operation.

3. A final valuation of the assets will be made in accordance with the terms of the Common Plan. It will be the subject of a special protocol.

(Signed) Sean Lester

W. Moderow

Geneva, 1 August 1946.

² See page 109 of this volume.

Exhibit B

76 (I). Privileges and Immunities of the Staff of the Secretariat of the United Nations

The General Assembly,

Having considered the proposal of the Secretary-General¹ that, in accordance with Section 17 of Article V of the Convention on the Privileges and Immunities of the United Nations, the categories of officials to which the provisions of Articles V and VII shall apply should include all members of the staff of the United Nations, with the exception of those who are recruited locally and are assigned to hourly rates;

Approves the granting of the privileges and immunities referred to in Articles V and VII of the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946, to all members of the staff of the United Nations, with the exception of those who are recruited locally and are assigned to hourly rates.

Fiftieth plenary meeting, 7 December 1946.

77 (1). Date of the Regular Session of the General Assembly

The General Assembly resolves that rule 1 of the provisional rules of procedure shall be amended to read:

"The General Assembly shall meet every year in regular session commencing on the third Tuesday in September."

Fiftieth plenary meeting, 7 December 1946.

78. (1). Tax Equalization

The General Assembly resolves that:

1. In order to achieve full application of the principle of equity among Members and equality among personnel of the United Nations, Members which have not yet completely exempted from taxation, salaries and allowances paid out of the budget of the Organization are requested to take early action in the matter.

2. The question of a staff contributions plan in lieu of national taxation is referred to the Advisory Committee on Administrative and Budgetary Questions, which may request the Secretary-General to submit new proposals to the next regular session of the General Assembly.

Fiftieth plenary meeting, 7 December 1946.

79 (1). Transfer of the Assets of the League of Nations

The General Assembly resolves that,

1. The Agreement concerning the execution of the transfer to the United Nations of certain

76 (I). Privilèges et immunités du personnel du Secrétariat des Nations Unies

L'Assemblée générale,

Ayant examiné la proposition du Secrétaire général¹ suivant laquelle, conformément à la section 17 de l'article V de la Convention sur les privilèges et immunités des Nations Unies, les catégories de fonctionnaires auxquelles devront s'appliquer les dispositions des articles V et VII devraient comprendre tous les membres du personnel des Nations Unies, à l'exception de ceux qui sont recrutés sur place et payés à l'heure;

Approuve l'octroi de privilèges et immunités mentionnés aux articles V et VII de la Convention sur les privilèges et immunités des Nations Unies, adoptée par l'Assemblée générale le 13 février 1946, à tous les membres du personnel des Nations Unies, à l'exception de ceux qui sont recrutés sur place et payés à l'heure.

Cinquantième séance plénière, le 7 décembre 1946.

77 (I). Date de la session ordinaire de l'Assemblée générale

L'Assemblée générale décide de modifier comme suit l'article 1 de son règlement intérieur provisoire:

"L'Assemblée générale se réunit en session ordinaire, chaque année, le troisième mardi de septembre."

Cinquantième séance plénière, le 7 décembre 1946.

78 (I). Péréguation d'impôts

L'Assemblée générale décide:

- 1. En vue d'assurer l'application pleine et entière du principe d'égalité parmi les Etats Membres et du principe d'équité à l'égard du personnel des Nations Unies, d'inviter les Etats Membres qui n'ont pas encore complètement exonéré de toute imposition les salaires et indemnités payés au titre du budget de l'Organisation, de prendre à bref délai toutes mesures utiles en la matière.
- 2. De renvoyer la question d'un barème des contributions du personnel destiné à remplacer les impositions nationales à la Commission consultative pour les questions administratives et budgétaires, qui pourra demander au Secrétaire général de présenter de nouvelles propositions à la prochaine session ordinaire de l'Assemblée générale.

Ginquantième séance plénière, le 7 décembre 1946.

79 (1). Transfert des avoirs de la Société des Nations

L'Assemblée générale décide que:

1. L'Accord concernant l'exécution du transfert aux Nations Unies de certains avoirs de la

Documents A/116 et A/116/Add. 1.

Documents A/116 and A/116/Add. 1.

Exhibit C

HEADQUARTERS • SIEGE NEW YORK, NY 10017 TEL 1 (212) 963 1234 • FAX 1 (212) 963 4879

17 December 2014

Excellency,

Complaint filed by Peter Anthony Gallo against Roberta Maria Baldini, Supreme Court of the State of New York, New York County, Index No. 160388/14

The United Nations has become aware of the above-mentioned Complaint filed by Mr Peter Anthony Gallo, a United Nations staff member, against Ms. Roberta Maria Baldini, another United Nations staff member A copy of the Complaint is attached hereto for ease of reference.

With the present letter, I hereby return a copy of the summons received by Ms Baldmi and respectfully request the competent United States authorities to take appropriate action to ensure full respect for the privileges and immunities of the United Nations in accordance with the obligations of the United States.

As you are aware, the United Nations is an international inter-governmental organization established pursuant to the Charter of the United Nations (hereinafter referred to as "the UN Charter"), a multilateral treaty signed on 26 June 1945. The UN Charter was ratified by the Government of the United States of America on 8 August 1945 and came into force in the United States on 28 October 1945

As an international organization, the United Nations has been accorded certain privileges and immunities which are necessary for the fulfilment of the purposes of the Organization Pursuant to Article 105, paragraph 1 of the UN Charter, "[t]he Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes". Article 105, paragraph 3 stipulates that "[t]he General Assembly may make recommendations with a view to determining the details of the application of paragraph[] 1 . . of this Article or may propose conventions to the Members of the United Nations for this purpose"

Her Excellency
Ms. Samantha Power
Permanent Representative of the United States
to the United Nations
New York

In order to give effect to Article 105 of the UN Charter, the General Assembly of the United Nations adopted the Convention on the Privileges and Immunities of the United Nations (hereinafter referred to as "the General Convention") on 13 February 1946 The United States of America acceded to the General Convention on 29 April 1970.

Article II, Section 2 of the General Convention provides that "[t]he United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution" Article V, Section 18(a) further provides that officials of the United Nations are "immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity"

Pursuant to Article V, Section 20 of the General Convention, it is the Secretary-General who has the sole authority to waive the immunity of officials of the Organization In this case, the claim filed by the plaintiff, Mr Gallo, relates entirely to actions undertaken by the defendant, Ms. Baldini, in her official capacity as a United Nations staff member in the Office of Internal Oversight Services and as Mr Gallo's supervisor at the United Nations. Accordingly, Ms. Baldini enjoys immunity in relation to the present Complaint unless her immunity is waived. The United Nations is expressly asserting the immunity of Ms. Baldini in relation to the above-referenced Complaint

In this regard, I would note that as the actions underlying the Complaint involve interactions within the workplace, there is an available forum and process for dealing with such workplace disputes at the United Nations

In view of the above, I wish to advise that the United Nations expressly maintains the immunity of the United Nations, and specifically, Ms. Baldini, in respect of the above-mentioned Complaint in the Supreme Court of the State of New York, New York County Accordingly, I respectfully request the Government of the United States to take the appropriate steps with a view to ensuring that the privileges and immunities of the United Nations and its officials are maintained in respect of this legal action.

Please accept, Excellency, the assurances of my highest consideration.

Miguel de Serpa Soares Under-Secretary-General for Legal Affairs

and United Nations Legal Counsel

Exhibit D

POSTAL ADDRESS-ADRESSE POSTALE UNITED NATIONS, N Y 10017 TELEPHONE NO (212)-963-1234, FAX NO (212)-963-3155

REFERENCE 2014-GLD-000292

7 January 2015

Excellency,

Complaint filed by Peter Anthony Gallo against Roberta Maria Baldini, Supreme Court of the State of New York, New York County, Index No. 160388/14

The United Nations has the honour to refer to its letter dated 17 December 2014 and subsequent discussions with the United States in relation to the above-mentioned Complaint filed by Mr. Peter Anthony Gallo, a United Nations staff member, against Ms. Roberta Maria Baldini, another United Nations staff member. A copy of said letter is attached hereto for ease of reference.

As indicated in the previous letter, the United Nations is an international inter-governmental organization established pursuant to the Charter of the United Nations (hereinafter referred to as "the UN Charter"), a multilateral treaty signed on 26 June 1945. The UN Charter was ratified by the Government of the United States of America on 8 August 1945 and came into force in the United States on 28 October 1945.

The United Nations has been accorded certain privileges and immunities which are necessary for the fulfilment of the purposes of the Organization. Pursuant to Article 105, paragraph 1 of the UN Charter, "[t]he Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes". Article 105, paragraph 3 stipulates that "[t]he General Assembly may make recommendations with a view to determining the details of the application of paragraph[] 1 ... of this Article or may propose conventions to the Members of the United Nations for this purpose".

In order to give effect to Article 105 of the UN Charter, the General Assembly of the United Nations adopted the Convention on the Privileges and Immunities of the

Her Excellency
Ms. Samantha Power
Permanent Representative of the United States
to the United Nations
New York

United Nations (hereinafter referred to as "the General Convention") on 13 February 1946. The United States of America acceded to the General Convention on 29 April 1970.

Article II, Section 2 of the General Convention provides that "[t]he United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution". Article V, Section 18(a) further provides that officials of the United Nations are "immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity". Pursuant to Article V, Section 20 of the General Convention, it is the Secretary-General who has the sole authority to waive the immunity of officials of the Organization.

The United Nations confirms that Ms. Baldini is a United Nations staff member and is not assigned to hourly rates. The United Nations reiterates that in this case, the claim filed by the plaintiff, Mr. Gallo, relates entirely to actions undertaken by the defendant, Ms. Baldini, in her official capacity as a United Nations staff member in the Office of Internal Oversight Services and as Mr. Gallo's supervisor at the United Nations. Accordingly, Ms. Baldini enjoys immunity in relation to the Complaint unless her immunity is waived by the Secretary-General.

In view of the above, we wish to reiterate that the United Nations expressly maintains the immunity of the United Nations, and specifically, the immunity accorded to Ms. Baldini, in respect of the above-mentioned Complaint in the Supreme Court of the State of New York, New York County.

The United Nations also reiterates that as the actions underlying the Complaint involve interactions within the workplace, there is an available forum and process for dealing with such workplace disputes at the United Nations.

Accordingly, we respectfully request that the Government of the United States urgently take the appropriate steps with a view to ensuring that the privileges and immunities of the United Nations and its officials are maintained in respect of this legal action.

Stephen Mathias
Assistant Secretary-General

SV Mak

in charge of the Office of Legal Affairs